

A person does not incur Retailers' Occupation Tax liability on the gross receipts from an isolated or occasional sale. See 86 Ill. Adm. Code 130.110. (This is a GIL.)

April 28, 2008

Dear Xxxxx:

This letter is in response to your letter dated September 17, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I need to obtain an individual ruling whether Illinois Use tax is due on an [sic] used mobile MRI mounted on a trailer. I am writing on behalf of a new L.L.C. that operates a mobile MRI service.

Our client has obtained a license from Secretary of State for the trailer on which the mobile MRI is mounted. When applying for the trailer license, our client was told by Secretary of State personnel that no use tax is due on the trailer. We later called the IDOR to confirm that use tax is not due on the trailer and we were told that the Secretary of State office would not have issued a license for the trailer if use tax were due.

In that subsequent conversation with IDOR, we also inquired if use tax is due on the used mobile MRI that is mounted on the trailer. We were told that although the vendor sells new MRI equipment, that sales tax was not due as the vendor is not in the primary business of selling used trailers. We were told that IDOR couldn't reference any ruling or regulation that use tax was due, but the individual who gave us that information said he thought that use tax was possibly due only on the MRI. Because he couldn't reference any ruling or regulation, he suggested that we write for a legal opinion on this matter.

We hereby request a ruling if use tax is due for a used mobile MRI mounted on a trailer that has been issued a license to operate. **If use tax is due, the use tax has to be**

filed and paid by October 22, 2007. Therefore, we ask for a prompt response on this matter.

Thank you for your attention to this matter.

DEPARTMENT'S RESPONSE:

A person does not incur Retailers' Occupation Tax liability on the gross receipts from an isolated or occasional sale. See 86 Ill. Adm. Code 130.110 regarding "Occasional Sales." Consequently, the purchaser of that tangible personal property does not incur a corresponding Use Tax liability on that purchase. See 86 Ill. Adm. Code 150.101(d). As a general proposition, the occasional sale exemption is only available when a person (as defined in Section 1 of the Retailers' Occupation Tax Act, 35 ILCS 120/1) purchases an item and then, after using the item, disposes of it by selling it. See 86 Ill. Adm. Code 130.110. However, the sale will not qualify as an isolated or occasional sale if the person holds himself out as being engaged in the retail sale of that item or similar type of tangible personal property.

When a person purchases an item of tangible personal property with the intention of reselling it to a purchaser for use or consumption, that person engages in conduct equivalent to holding himself out as a retailer. This makes the initial purchase a purchase for resale, and the subsequent sale is a taxable sale at retail subject to Illinois Retailers' Occupation and Use Tax liabilities. See 86 Ill. Adm. Code 130.201 and 130.210. Infrequent sales do not transform sales into occasional sales if the original objective of purchasing the items was to resell the items to purchasers for use or consumption.

The Illinois Secretary of State's decision to license the trailer without collecting Use Tax is not determinative on the question of whether there is Use Tax liability. It appears from the information provided in your letter that the vendor that sold the trailer and used MRI is a retailer for purposes of determining Use Tax liability. The issue is not whether the "vendor is not in the primary business of selling used trailers" as you put it, but whether the vendor acquired the trailer and MRI with the intention of reselling them. The information you have provided suggests that the vendor did acquire the trailer and MRI with the intention of reselling them. Therefore, Use Tax would be due on the cost price of the trailer and the MRI.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk